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Review of the efficiency of the administrative and financial functioning of the United Nations

Human resources management

Report of the Joint Inspection Unit on the administration of justice at the United Nations

Note by the Secretary-General**

The Secretary-General has the honour to transmit to the members of the General Assembly his comments on the report of the Joint Inspection Unit entitled "Administration of justice at the United Nations" (A/55/57).

* A/55/150.

** The submission of this report was delayed pending completion of the report of the Secretary-General on human resources management reform (A/55/253).

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Comments of the Secretary-General on the report of the Joint Inspection Unit entitled "Administration of justice at the United Nations"

General comments

1. In accordance with article 11 of the statute of the Joint Inspection Unit, the Secretary-General is providing his comments on the report of the Joint Inspection Unit (JIU) entitled "Administration of justice at the United Nations" (A/55/57).

2. In the executive summary of its report, the Joint Inspection Unit inspectors refer to several international instruments and essentially suggest, inter alia, that "important international instruments such as the Universal Declaration of Human Rights, the Human Rights Covenants and the 1998 Geneva ILO Declaration on Fundamental Principles and Rights at Work" should be expressly incorporated into the United Nations internal regulations and rules. The substance of the applicable legislation is an issue that is quite distinct from the machinery of the administration of justice. As JIU states that its aim is to review the machinery, the reference to the substantive legislation therefore seems out of context. In any event, the instruments mentioned in the report are applicable only to the States that have ratified them and not to any intergovernmental organizations to which those States might belong. If States wish to make the provisions or the principles of such instruments applicable to an international organization, they can do so by means of appropriate resolutions in the organization.

3. The conditions of service of United Nations staff stem from and are based on the Charter of the United Nations, which provides that the staff shall be appointed by the Secretary-General under regulations established by the General Assembly (Article 101, paragraph 1). Thus, those conditions are determined by the General Assembly through the adoption of staff regulations.

4. The question of the relevance of the ILO conventions to the United Nations conditions of service was addressed in the legal opinion provided by the Office of Legal Affairs on 30 November 1978 and published in the *United Nations Juridical Yearbook* as follows:

> "[ILO] Conventions are, of course, applicable only to those States who ratify them and not to any intergovernmental organizations that those States might belong to". As was pointed out in a previous opinion from this Office: "If States feel obliged to bring the provisions or the principles of such treaties to bear on an international organization, they can do so by means of appropriate resolutions in the organization."

5. In accordance with the above stated position of the Office of Legal Affairs, Member States are aware of labour standards, including provisions of various ILO conventions, and, if they so desire, can decide to incorporate those provisions into the relevant Staff Regulations.

6. Furthermore, it does not necessarily follow that current conditions of service of the United Nations staff are or should be consistent in all respects with international labour standards as reflected in ILO conventions. The Secretary-General believes that all relevant basic labour standards enshrined in the Universal Declaration of Human Rights are fully reflected in the United Nations staff conditions of service. It should also be noted that the standards reflected in the ILO conventions have not been developed and adopted generally to address conditions of service by individuals in government service or those who serve international organizations. Thus, there may be important distinctions between the standards that apply to individuals who are part of the labour force of a State generally, and to those who serve in their Governments or with international organizations.

Comments on the recommendations

Recommendation 1
Creation of an office for the settlement of disputes and the administration of justice

To increase the independence of the system of administration of justice at the United Nations, an Office for the Settlement of Disputes and the Administration of Justice should be created reporting to the Executive Office of the Secretary-General. The Office should comprise: an ombudsman function; the secretariat of the

Administrative Tribunal; the secretariat of the Joint Appeals Board and the Committee for Professional Responsibility (established to replace the Joint Disciplinary Committee); and the Office of the Coordinator of the Panel of Counsel.

7. The Joint Inspection Unit proposes in the report that the secretariat of the United Nations Administrative Tribunal be placed together with the secretariats of other appellate bodies, within a new office established to deal solely with issues relating to settlement of staff-management disputes and the administration of justice. With regard to the Administrative Law Unit, which is one of the offices involved in the administration of justice, JIU does not indicate whether this unit would also be included in the proposed new office.

8. The purpose of this recommendation is "to increase the independence of the system of administration of justice" in the United Nations and to enhance the "image and credibility" of the units involved with the administration of justice, although the Inspectors found no reason to believe that the units "are in any way subject to undue pressure by management". Even if perceived lack of independence were the problem, the report does not explain how this recommendation would resolve or alter that perception. In fact, the changes as proposed may have the opposite effect.

9. At present, while the secretariat of Administrative Tribunal is, for administrative purposes, placed within the Office of Legal Affairs, the Executive Secretary of the Tribunal, appointed by the Secretary-General, reports to the Tribunal on substantive matters. The Secretariat has it own separate facilities. If the General Assembly were to determine that the Tribunal secretariat should be removed from the Office of Legal Affairs and placed within the proposed new office, it would place the Tribunal Secretariat, an organ of an independent judicial body, together with joint staff-management bodies, all of which would presumably report to the head of that new office; unless otherwise provided, the Executive Secretary or Registrar of Administrative Tribunal would also have reporting responsibilities to the head of the proposed new office, which would be inconsistent with their ability to function independently under the instructions and supervision of the Tribunal. Such a move would raise serious concerns regarding the independence of the United Nations Administrative Tribunal as well as the desirability and appropriateness of having the Tribunal Secretariat in the same office as the joint staff-management bodies whose decisions are appealed to the Tribunal.

10. The recommendation of JIU also does not address the issue of how the overall structure and decision-making process would change with the establishment of the proposed new office. In addition, the recommendation lacks clarity in respect of the lines of authority between the different units that would be included in the new office and does not indicate who would be taking the final decision on appeals. Further clarification is needed on how the specific change made would improve the current system.

Recommendation 2
Creation of an ombudsman function

To strengthen the system's capability for informal conciliation, mediation and negotiation, an ombudsman function should be created to replace the Panel on Discrimination and Other Grievances. This function would be part of the Office for the Settlement of Disputes and the Administration of Justice. The ombudsman should be an independent official at the senior level appointed by the Secretary-General, in consultation with the staff representatives, for a single, non-renewable five-year term. The access of staff members at all duty stations to the ombudsman should be ensured at all times. In addition, the ombudsman will be assisted at each duty station by a person or a panel, appointed on a part-time basis, whose work the ombudsman will coordinate.

11. This recommendation proposes the replacement of the Panel on Discrimination and Other Grievances by the ombudsman function as part of a new office for the Settlement of Disputes and Administration of Justice. While the recommendation calls for the replacement of the Panel, which is currently operating on a public basis, the creation of a high-level post for the ombudsman function and other staffing would need additional resources.

12. It has been proposed in the report of the Secretary-General on human resources management reform (A/55/253) that an ombudsman mechanism be established. As is the practice with other United

Nations posts and functions, following an assessment of the precise responsibilities to be exercised by the ombudsman, the level, tenure and operational requirements of the proposed post will be determined by the Secretary-General, who would then request the General Assembly (through the Administrative Committee on Administrative and Budgetary Questions) to establish and finance the post and service.

13. The conclusion in the JIU report concerning the lack of effective mediation by the Panel on Discrimination and other Grievances seems to be in line with the most recent report on the activities of the Panel reflected in document ST/IC/1999/79. The replacement of the Panel by an ombudsman appears to be an effective means of strengthening the informal mediation process in the United Nations. The human resources reform package which will shortly be before the General Assembly for its consideration and approval will include this issue since the Panel was created pursuant to General Assembly resolution 31/26.

Recommendation 3
United Nations Administrative Tribunal

(a) Article 9 of the statute of the Administrative Tribunal should be amended to eliminate present restrictions on the Tribunal's authority. When the Tribunal considers the application to be well founded, it should have full powers to order the rescinding of the decision contested or the specific performance of the obligation invoked. Furthermore, the Tribunal alone should decide on the appropriate amount of compensation to be paid.

14. As indicated in paragraph 117 of the JIU report, the recommendation would align the United Nations Administrative Tribunal with the ILO Administrative Tribunal). However, as stated in the report of the Secretary-General on the feasibility of establishing a single administrative tribunal (A/42/328, of 15 June 1987, para. 50):

> "One of the most controversial differences between the two tribunals relates to their restrictive powers to order specific performance. Both tribunals are obliged, if they find a complaint well founded, to order the rescission of the impugned decision or the performance of the obligation relied upon (ILO Administrative Tribunal statute, art. VIII; United Nations Administrative Tribunal statute, art. 9, para. 1). However, the two statutes contain substantially different provisions for the contingency that rescission or performance might not be considered feasible or desirable:
>
> '(a) In respect of the ILO Administrative Tribunal, it is the Tribunal itself that decides whether rescission or performance "is not possible or desirable", in which cases it awards the applicant monetary compensation (not subject to any specific limit ...); however, in respect of the most sensitive situation, the reinstatement of a staff member, the ILO Administrative Tribunal has, in practice, only very rarely ... required such performance without giving the respondent organization the choice of paying compensation;
>
> '(b) In respect of the United Nations Administrative Tribunal, the Tribunal must automatically fix, as part of its original judgement, an amount of compensation to be paid to the applicant (subject to a conditional limit ...), leaving it to the Secretary-General to decide, whether "in the interest of the United Nations" he prefers to comply with the order for rescission or performance, or to pay the amount indicated by the Tribunal; in practice and especially in cases involving separation from service, he almost always chooses to pay the compensation rather than to grant reinstatement.'"

15. Acceptance of the JIU recommendation to allow the Tribunal to order (a) specific performance and (b) unlimited compensation would seriously restrict the Secretary-General's authority as chief administrative officer of the Organization. In any case, the matter would require consideration by the General Assembly for subsequent amendment of the statute of the United Nations Administrative Tribunal. In this connection, it may be recalled that the proposals submitted in the report cited above (A/42/328) were not accepted by the General Assembly.

(b) Member States nominating candidates for the Administrative Tribunal are urged to make every effort to ensure that their candidates possess high professional qualifications and relevant experience, preferably in the judiciary.

16. There seems to be unanimous agreement on this issue.

(c) Bearing in mind the ever increasing workload of the Administrative Tribunal and the resulting backlog of cases before it, the secretariat of the Administrative Tribunal should be strengthened by the addition of a post of Deputy Secretary with a view to carrying out efficiently and expeditiously its functions.

17. Any such proposal would have to be supported by quantitative data and analysis showing an increase in the number of cases dealt with by the Tribunal. The Secretary-General would then re-examine the Tribunal's needs, and should sufficient justification be established, submit his proposals to the General Assembly.

Recommendation 4
Joint Appeals Board and Committee for Professional Responsibility

(a) The present Joint Disciplinary Committee should be replaced by a Committee for Professional Responsibility. This Committee's functions will be analogous to those of the Joint Disciplinary Committee, but with greater emphasis on the ethical as compared to the disciplinary aspects of its role.

18. This recommendation suggests the replacement of the present Joint Disciplinary Committee by a committee for professional responsibility. It is not quite clear why JIU calls for greater emphasis on the ethical aspects of cases submitted to the Committee. Under relevant regulations and rules, the mandate of the Joint Disciplinary Committee is to advise the Secretary-General on disciplinary, not ethical, matters arising in connection with the misconduct of any staff member. In any case, the Staff Regulations and Rules provide the basis for determining whether there has been any misconduct. Furthermore, the recommendation does not explain what would change in terms of rules or procedures; nor does it identify the specific problems with the current Committee that should be remedied. It should also be pointed out that the current title of the body in question correctly describes its composition and functions: "Joint" — consisting of both management and staff, and "Disciplinary" — advising on disciplinary matters.

19. In addition, there may be financial implications resulting from the implementation of this recommendation but, in the absence of details on how the proposed committee would operate, it is not possible to assess these requirements.

20. With regard to a relevant but somewhat separate matter, in paragraph 132 of its report JIU has stated that it would like to see greater transparency in the operation of the Joint Disciplinary Committee and the Joint Appeals Board. It should be pointed out that under current rules and policy, the proceedings of these bodies are confidential. As a practical matter, it may be difficult to preserve the justified requirement of confidentiality, which is essential, if the reports of those bodies or even parts of the reports are to be made public. In this respect, it is clear that proposed non-inclusion of the names of the staff concerned as suggested by JIU would not always be a sufficient guarantee of confidentiality.

(b) New members of the Joint Appeals Board and the Committee for Professional Responsibility should be offered basic legal courses with special reference to the terms of appointment of the United Nations staff, the administrative policies and practices of the Organization and the jurisprudence of the Administrative Tribunal.

21. The responsibility for training members of the Joint Appeals Board and the Joint Disciplinary Committee lies with their respective secretariats. The training may take the form of a seminar for all members, or of briefings for individual panels on the rules applicable to particular cases. Periodically, training seminars on issues pertaining to the administration of justice are organized jointly with the Office of Human Resources Management and other offices. On specific cases, the secretaries of the Joint Appeals Board/Joint Disciplinary Committee panels brief members more thoroughly on applicable rules and regulations. The secretariats also organize workshops for new members of the two bodies where

presentations from different units involved in the administration of internal justice are made. It is envisaged that, in future workshops, members would receive more hands-on training through carefully selected case studies.

(c) The practice of accepting the unanimous recommendations of the Joint Appeals Board and the Committee for Professional Responsibility should be revivified, with a view to emphasizing the importance of these advisory bodies established under regulations issued by the General Assembly, without compromising in any way the authority of the Secretary-General as chief administrative officer of the Organization.

22. This recommendation is further discussed in paragraphs 123 to 128 of the JIU report. It should be recalled that while reports of the Joint Appeals Board continue to be advisory to the Secretary-General, in 1987 it was decided that unanimous reports would, as a matter of practice, be accepted, provided that they did not impinge on major questions of law or principle (see A/C.5/42/28). Furthermore, as indicated by the Secretary-General in his report (A/C.5/43/25), where the recommendation of a Board is rejected, reasons are given for the decision. The issue has also been considered by the Administrative Tribunal. In its Judgement No. 562, *Al-Jaff* (1992), the Tribunal examined the issue of the extent to which the Secretary-General is bound by the unanimous recommendations of the Joint Appeals Board. In the Tribunal's view "the Secretary-General has only adopted a policy, from which he can depart. Thus, the relevant rules concerning the advisory nature of the Joint Appeals Board recommendations remain unchanged".

23. There has been no change in the practice by the Secretary-General. In conformity with the above, unanimous Joint Appeals Board/Joint Disciplinary Committee recommendations continue to be rejected when the Secretary-General believes that compelling reasons of law or principle, or departure from established policies are involved. In all instances the Secretary-General provides detailed reasoning for his decisions. With the increased training envisaged for members of the Board and the Committee in the applicable law and policies of the Organization, it is expected that unanimous recommendations will be more reliably supported by evidence and thus be in accordance with applicable law.

(d) The secretariat of the Joint Appeals Board should publish annual reports containing information on the cases heard as well as general statistics on the disposition of such cases.

24. Publication of annual reports of the Joint Disciplinary Committee and the Joint Appeals Board on the number of cases heard and related statistics could be useful, bearing in mind, however, the comments regarding confidentiality in paragraph 20 above. The statistical reports would help to identify trends, training needs, policy issues and so on.

(e) The holding of oral hearings before all United Nations appellate bodies should be the subject of further study with a view to ascertaining whether this modality could contribute to the settlement of disputes and speed up the disposition of cases.

25. The recommendation to increase the number of oral hearings before the Joint Appeals Board would need further discussion, taking into consideration the findings from the pilot project on appeals. The current appeals process requires that the Office of Human Resources Management defend the decisions of programme managers before the appellate bodies. As proposed in the report of the Secretary-General on human resources management reform (A/55/253), programme managers would be required to present the factual basis of their decisions to those bodies with the support of the Administrative Law Unit of the Office of Human Resources Management on points of law. However, in most appeals where the position of both parties is already on paper, oral hearings could possibly delay, rather than expedite, the disposition of a case. Oral hearings are desirable when the panels require further clarification on matters before them.

(f) Information technology, including videoconferencing, should be increasingly used with the aim of facilitating the access of field-based staff to dispute-settlement instances and appellate bodies.

26. The recommendation to make increased use of information technology is a sound one.

Recommendation 5
Options for a higher appeal instance

The Inspectors believe that further consideration should be given to reviving the advisory function of the International Court of Justice in the internal recourse procedure. In the meantime, closer working relationships should be encouraged between the United Nations Administrative Tribunal and the other major tribunal in the United Nations system, the International Labour Organization Administrative Tribunal with a view to rationalizing their competence and jurisdiction and harmonizing their jurisprudence.

27. While the Inspectors' concerns relating to the non-existence of some form of appellate mechanism are appreciated, it should be noted that the Committee on Applications for Review of Administrative Tribunal Judgements, mentioned in paragraph 64 of the JIU report, was not a forum to appeal judgements, although it had been misconstrued by some to be so. The Committee's powers were limited to requests for advisory opinions in United Nations Administrative Tribunal judgements, and on very limited grounds. There was no provision for direct appeal to the Court. It is also not clear from the JIU report why the General Assembly's decision, in its resolution 50/54, to cease recourse to the Court should be reversed. It should be noted that the General Assembly has considered the issues mentioned in the recommendation, including harmonization of the jurisprudence of the United Nations Administrative Tribunal and the ILO Administrative Tribunal on numerous occasions in the past.

Recommendation 6
Proper legal advice and representation for staff members

As a first step to enhance the availability of legal advice and representation for the staff, the Inspectors recommend that the Office of the Coordinator of the Panel of Counsel should be strengthened. The post of Coordinator should be classified at the senior Professional level and filled by a staff member with strong legal qualifications. In addition, the option should exist for staff members, who at present may be represented only by current and retired staff members, to be represented by staff members who have separated from the Organization through resignation or in other ways.

28. This recommendation addresses the alleged imbalance in the level of representation for administration and for staff. It proposes to strengthen the Office of the Coordinator of the Panel of Counsel by appointing a coordinator with legal qualifications. With regard to the level and operational requirements of the post, it should be pointed out that the responsibility for determining the resources required to improve the provision of legal advice and representation for all staff members rests with the Secretary-General. The need for such an appointment has been reviewed in the light of many considerations, including, inter alia, the actual functions of the Coordinator and whether those functions should also include the provision of legal advice. The provision of legal backstopping to the Panel of Counsel seems appropriate and, to that end, the Administration has also made particular proposals, as part of the overall proposals for human resources reform.